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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 219, and 252

RIN 0750-AI42

**Defense Federal Acquisition Regulation Supplement: Advancing
Small Business Growth (DFARS Case 2014-D009)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that entering into a contract award may cause a small business to eventually exceed the applicable small business size standard.

DATES: Comment Date: Comments on the proposed rule should be submitted in writing to the address shown below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014-D009, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D009" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that

corresponds with "DFARS Case 2014-D009." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D009" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2014-D009 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Lee Renna, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement policy to ensure a small business contractor is made aware that entering

into a covered contract conveys its acknowledgement that doing so may cause it to eventually exceed the small business size standard of the North American Industry Classification System (NAICS) code identified in the solicitation and contract. This clarification is required by section 1611 of the National Defense Authorization Act for Fiscal Year 2014, (10 U.S.C. 2419).

A "covered" contract within the context of this rule means a contract that was awarded to a qualified small business concern, as defined in section 3(a) of the Small Business Act, Pub. L. 85-536 as amended, (15 U.S.C. 632(a)), with an estimated annual dollar value that—

- Will exceed the small business size standard (if expressed in dollars) for the North American Industry System (NAICS) code assigned by the contracting officer; or
- Will exceed \$70,000,000, if the small business standard is expressed in number of employees, for the NAICS code assigned by the contracting officer.

Should this occur, the company will no longer qualify as a small business in that and other similar NAICS codes.

Section 1611 further stipulates that new language shall be added to the DFARS to encourage these companies to develop the capabilities and characteristics typically sought by DoD from contractors that are competitive as other than small businesses.

To this end, small business contractors may seek out the training and counseling services available from the Procurement Technical Assistance Program (PTAP). The PTAP, through its network of over 300 Procurement Technical Assistance Centers located across the United States as well as the territories of Puerto Rico and Guam, offers a wide range of Government contracting assistance. The PTAP is administered by the Defense Logistics Agency and funded through cooperative agreements between DoD and state and local non-profit entities.

To incorporate this guidance, the rule proposes to revise 212.301(f); add a new section 219.309 entitled Solicitation provisions and contract clauses; and add a new solicitation provision at 252.219.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O.

12866, Regulatory Planning and Review, dated September 30, 1993.

This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it does not create or alleviate any financial burden on small entities. The purpose of the rule is to advise small businesses that by entering into a DoD contract, they may eventually cause the company to exceed the size standard associated with the NAICS code identified in the contract. The rule further encourages these contractors to develop the competencies typically desired of other than small businesses. Therefore, an initial regulatory flexibility analysis has not been performed.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2014-D009), in correspondence.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 219, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 219, and 252 are proposed to be amended as follows:

1. The authority citation for parts 212 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 212.301 by—

- a. Redesignating paragraphs (f)(xxii) through (lxxiv) as (f)(xxiii) through (lxxv); and
- b. Adding a new paragraph (f)(xxii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xxii) Use the provision at 252.219-XXXX, Advancing Small

Business Growth, as prescribed in 219.309, to comply with 10 U.S.C. 2419.

PART 219—SMALL BUSINESS PROGRAMS

3. The authority citation for part 219 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

4. Add section 219.309 to subpart 219.3 to read as follows:

219.309 Solicitation provisions and contract clauses.

(a) Use the provision at 252.219-XXXX, Advancing Small Business Growth, as required by 10 U.S.C. 2419, in solicitations, including solicitations using FAR part 12 procedures for acquisition of commercial items, when the estimated annual value of the contract is expected to exceed—

(1) The small business size standard, if expressed in dollars, for the North American Industry Classification System (NAICS) code assigned by the contracting officer; or

(2) \$70,000,000, if the small business size standard is expressed as number of employees for the NAICS code assigned by the contracting officer.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 252.219-XXXX to read as follows:

252.219-XXXX Advancing Small Business Growth.

As prescribed in 219.309, use the following provision:

ADVANCING SMALL BUSINESS GROWTH (DATE)

(a) This provision implements 10 U.S.C. 2419.

(b) The Offeror acknowledges that by acceptance of this contract, it may exceed the applicable small business size standard of the NAICS code assigned to the contract and would no longer qualify as a small business concern for that NAICS code. (Small business size standards matched to industry NAICS codes are published by the Small Business Administration and are available at <http://www.sba.gov/content/table-small-business-size-standards>.) The Offeror is therefore encouraged to develop the capabilities and characteristics typically desired in contractors that are competitive as other-than-small contractors in this industry.

(c) For technical assistance in this regard, the Offeror may contact the nearest Procurement Technical Assistance Center (PTAC). PTAC locations are available at <http://www.ptac-us.org>.

(End of provision)